Decimarum & Oblationum Tabula.

A

Tything-Table.

OR,

Table of *Tythes* and *Oblations*, according to the Ecclesiastical Laws and Ordinances established in the Church of *ENGLAND*, now newly reduced into a Book.

Containing as well the very letter of the Law under which these Rights be severally comprised, together with such Questions of Tything, and their Resolutions by the Laws, Canon, Civil, and approved doctors opinions of the same, as be ordinarily moved, and which do often prove to Controversies herein.

As also a Brief and summary Declaration of *Composition*, *Transaction*, *Custom*, *Prescription*, *Priviledge*; And how they prevail in Tithing.

Annexed hereunto, summarily, such Statute-Laws of the Land concerning these Rights, as have been herein Authorised, and now do remain in their Force acordingly. To the Easie and Plain Instructions of all the Subjects or Lay, whether in these Rights to demand them, or bounden to perform the same.

Compiled by *W. C.* Bach. of the Civil-Law.

Hallow thy Tythes unto God with gladness, Eccles. 25.
So shall thy Barns be filled with plenteousness, and thy presses flow over with sweet Wine. Prov. 3.

LONDON,
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THE PREFACE.

THE Canon *and* Civil Laws (*Chriſtian Reader,*) *ſince firſt King* HENRY, *of happy Memory, the Eighth, diſmembred their bodies,* [a] *and reſtored to the Diadem of the Land (over the State Eccleſiaſtical) the Ancient Juriſdiction of the Crown, they have and do lie hidden, ſuch of them as King* HENRY *then continued, and King* EDWARD [b] *that ſucceeded him, Intituled in his Reign the Kings, and afterwards were the late Queens deceaſed, and as they be now termed,* The Kings Eccleſiaſtical Laws, (*the former Statutes revived by Her*

[a] 25. Hen. 8. 19.

[b] 2. Ed. 6. 13.

c 1. Eliz 1. *Majesty*[c] *in the first year of her Reign*) *they have these Laws, and do lie hidden in manifold, dark, and dangerous corners in practise only, familiar in consistories, and their knowledge to the Countries obscure: hence are the manifold untimely customs and Prescriptions that we have: I inveigh not against them, neither Custom nor Prescription, that be perfect now, and in their perfect being; I would not be taken, or rather mistaken, so; but they be weeds in their growing and all their ingendring time, wherein (only) they give place to prevention: they be Laws of themselves (in their ripeness) inviolable*[d]. *If therefore some insight in these Laws, and knowledge succeeding this long obscurity, may work another effect in the time to come, none can say uprightly now that he is, may be, or his Posterity after him (if not benefitted) damnified thereby: haply I may be charged (in translating) to have damnified the Laws. I have shadowed (I confess) their first and O-*

d Clo. & D. D. i C. vigilanti de præscrip.

rigi-

riginal grace; ſuch Beauty have they, and Elegancy too, in the Latine Tongue: but I write to Engliſh-*men, and ſuch as not ſo much affect to hear of the beauty as they be deſirous to underſtand the benefit of their Laws: for ſuch I have framed this* Tything-Table, *and repleniſhed (as my Slender skill would ſerve) the ſame with neceſſary, diſperſed, and ſcattered Laws, not hurtful, conſidered as they be delivered, nor prejudicial to the Royal Prerogative, nor repugnant to the Laws, Statutes, nor Cuſtoms of this Land. Tythes (by ſale) be turned into chattels, and made of ſpiritual, temporal things: in debate (of the right of Patronage) in Tythes, and exceeding the fourth part of the value of the Church[c], where great Wood is demanded in the name of* Sylva Cædua[g], *in Tithes, Oblations, where there is any ſtate of inheritance[b], and where they be demanded, and be neither due nor accuſtomed, the Kings prohibition doth[i] lie in all theſe caſes and no conſultation: o-*

[c] Art. cler. 9. Ed. 2.
[g] 9. Ed. 2. 34. E. 1. 1. de conjunct. in feo atis.
[b] 45. Ed. 3. 3. 3. Hen. 8. 7.
[i] 13 Ed. 1. circ. agat.

ther-

therwiſe, and without ſuch temporal mixtures, prohibition hath no place[k]: *but the Judge Eccleſiaſtical hath power to proceed notwithſtanding the Kings prohibition*[l]. *Conceiving them therefore* (Chriſtian Reader) *as they be meant, and mentioned, to be preſented unto thee,* viz. *as they be meerly Spiritual Tythes and Oblations, and without any temporal mixture, thou ſhalt not miſconſtrue the Author, nor deceive thyſelf. Farewel.*

[k] Fitz. de natura brevium Fol. 50. de conſultatione.
[l] 9. Ed. 2. cir. cumſpecte. agaris. 13. Ed.

The Reader's (ever) in the LORD,
W. C.

These Books following are to be ſold by *Andrew Crook*, 1670.

Hookers Works. Folio.
Anderſon's Reports, Fol.
Bevis of Hampton, *Quarto.*
Moſes and *Aaron.*
Counter-Scuffle.
Tything-Table.
Hobbs againſt the *Geometricians*—*De mirabilis Pecci.*
Canons of the Church.
7. *Champions.*
Mandivels Travels.
Scidley Enchiridion, Octo.
Wickens Concordance.
Erra Pater.
Geſta Romanorum.
Dr. *Sanders de Jure.*
Ogylbys Virg. Engliſhed. 12°.
Butlers Rhetorick.
Elegantiæ Poeticæ.
Lucians Dialogues gr. lat.
Helps to *Diſcourſe.*
Mothers Bleſſing.

A brief Collection of the Letter and Terms of the Law, with their ſeveral Expoſitions in Engliſh: and of all ſuch queſtions of Tithing which be mentioned and contained within the body of this Table, whereby every Tithable thing and queſtion that is moved and anſwered of the ſame is readily found.

The Firſt Queſtion.

DEcima de { *Frugibus*, } Of Harveſt Fruits, Sown, Mown, Reaped, Gathered, Bound, or Looſe, in Heap, Shock or Sheaf.

1 When they be Tithable, and ſuch other Prædial Tithes, whether it be lawful to the owner to diſpoſe any manner of way of any part of the fruits before diviſion be made, and the tenth part be ſevered from the Nine parts?

2 If a Stranger ſhall preſcribe Tithes in another Pariſh, and there ſhall happen afterwards barren and waſte grounds to be tilled, whether the ſtranger that preſcribeth, or the Church where the grounds do lie, ſhall reap the Tithes?

3 If one ſhall have right of tithe in a Wood, and that

Wood become afterwards Arable ground, whether his right continueth in the Corn?

The second Question.

Decima de
- *Sylvis cæduis*, i. Of Woods felled and preserv'd to grow again.
- *Lignis*, i. Of Wood not in use, nor apt for Timber but for firing.
- *Thenitiis agrorum*, Of Trees planted for fencing of Grounds, in Fields, Pastures, and hedg-rows.
- *Turviis*, i. Of Turves growing in fenniſh & mooriſh ſoils as in the Iſle of *Ely*.

1 Wood of twenty years growth and upwards, whether it be Tithable or not? And what of Loppings of Timber Trees?

2 When Woods be felled and ſold, who ſhall anſwer the Tithe? the buyer or the ſeller?

3 If the inheritance of a Wood be ſold, that is in arrearages for Tithe, whom the Parſon may implead?

4 Turves, amongſt what tithes they be reckoned?

The Third Question.

Decima de *Paſturis*, i. Of Paſture Grounds.

1 If they be fed, how the Tithe ſhall be anſwered?

The Fourth Question.

Decima de *Fenis*, i. Of Hay.

1 Hay

1 Hay, of what places? and what Tithe it is?

The Fifth Question.

Decima de { *Lana*, i. Of Wool.

1 Whether the ſheep of Sons or Daughters be Tithable (or not) with their Fathers Flocks wherein they do go?

2 Where ſheep be removed from one Pariſh to another, how the Tithe is divided by rate and proportion of time?

3 If ſtrange Sheep be brought to another Pariſh and there be Clipped or ſhorn, how they be Tithable there?

The Sixth Question.

Decima de { *Agnis*, i. Of Lambs.
Vitulis, i. Of Calves.
Porcellis, i. Of Piggs.
Pullis, i. Of Colts.

1 Whether the Parſon may expect his Lamb (the next year following) if the Pariſhioners number in any one year amounteth not to ten? And what if he faileth then?

2 When Ewes be removed, and other ſuch Cattel and Beaſts from one Pariſh to another, how the ſeveral *Churches* be intereſted in the Tithe of their Lambs, and ſuch other increaſe.

3 Of Lamb, Calf, Kid, Colt, Pig, &c. and when is their Tithable time?

The Seventh Queſtion.

Decima De { *Lacte*, i, Of Milk. / *Caſeo*, i. Of Cheeſe.

1 Milk and Cheeſe how? And when they be Tithable?
2 If Cattel feed in one Pariſh and couch in another, how the profits be tithed
3 Where Cheeſe is Tithable, and the number of Cattel ſo ſmall that none can be made; how the tithe ſhall be anſwered for their ſmall proportion?
4 Where Milk of ſheep is tithed in kind, how they be tithable (for their paſture) in the Winter, when they do yield no ſuch profit?

The Eighth Queſtion.

Decima De { *Fructibus Arborum*, i. Of fruits of Trees.

1 Of Apples, and other ſuch fruits of Trees, what of their tithable time?

The Ninth Queſtion.

Decima de { *Seminibus*, i. Of Seeds: Hemp, Flax, Onions, Rape, and ſuch like. / *Herbis*, i. Of Pot-Herbs. / *Curtilagiis*, i. Of places adjoyning to Manſion Houſes, applyed to Seeds and Herbs.

1 Of Seeds and Herbs, what manner of Tithes they be?

The

The Tenth Queſtion.

Decima de { *Pannagiis*, i. Of Maſt, or Beech or
Silvarum, Oke, or ſuch Like.

1 Of Maſt, what, when it is given? and what, when it is ſold?

The Eleventh Queſtion.

Decima de { *Molendinis*, i. Of Mills, forced by Wind, Water, &c.
Vivariis, i. Of Parks, Warrens, Pools, Ponds, &c.
Beſtiis guarenarum, i. Of wild Beaſts under cuſtody, &c.
Columbariis, i. of Dove-cotes, or houſes
Apibus, i. Of Bees.

1 What manner of Tithes they be? and how they be tithable?

The Twelfth Queſtion.

Decima de { *Ancupiis*, i. Of Fowlings.
Venationibus, i. Of Huntings.
Piſcationibus, i. Of Fiſhings.

1 Beaſts, Fiſhes, Fowls, how (diverſly) they be tithed, (diverſly) conſidered?

The

The thirteenth Queſtion.

Decima de { *Cygnis*, i. Of Swans
Aucis, i. Of Geeſe.

1 Of Swans, Geeſe, Ducks, and how they be conſidered of.

The Fourteenth Queſtion.

Decima de { *Ovis*, i. Of Eggs.

1 Of Eggs, where Tithes be yielded, whether Chickens be Tithable there?

The Fifteenth Queſtion.

Decima de { *Artificiis*, i. Of Crafts, and manual Occupations.
Negotiationibus, i. Of trades by wares Merchandiſe, &c.

1 Of perſonal Tithes, what time, place, and perſons be required in them; and of whom the Church is forbidden to receive either perſonal tithe, or Oblation:

The Firſt Queſtion.

DEcima De { *Frugibus*, i. Of Harveſt fruits, Sown, Mown, Reaped, Gathered, Bound or Looſe, in Heap, Shock or Sheaf.

1 When

1 When they be Tithable, and ſuch other prædial Tithes, whether it be lawful to the owner to diſpoſe any manner of way of any part of the fruits before diviſion be made, and the Tenth part be ſevered from the Nine parts?

2 If a ſtranger ſhall preſcribe Tithes in another Pariſh, and there ſhall happen afterwards barren and waſte grounds to be tilled, whether the Stranger that preſcribeth, or the Church where the grounds do lie, ſhall reap the Tithes?

3 If one ſhall have right of Tithe in a Wood, and that wood become afterwards Arable Ground, whether his right continueth in the corn?

Queſtions of Tything, and their Reſolutions.

The firſt Queſtion.

1 PAriſhioners out of their Harveſt-fruits, ſpecified under the word *Frugibus*, (before their Tithes aſſigned of the ſame) diminiſh their Fruits, ſome one way, ſome another: admit to Godly, or Prophane uſes: or (as their manner hath been) to the ſatisfying therein their Labourers their Wages. The queſtion is, whether this be lawful? It is anſwered, A fraud unto the Church: For his allowance (if any ſuch be) not otherwiſe ought to be made than forth of the Nine parts: and the reaſon is, *Decima debet ſolvi ſine diminutione, &c.* Tithe muſt be paid without any diminiſhing *a*.

2 The Parſon of the Rectory of *A.* (*Jure præſcriptionis*) *i.* by right of Preſcription, hath intereſt in and to the predial Tithes of the Pariſh Church of *B.* where there be converted (into Tillage) divers barren, heath, and

a c. Cum homines de decim. Glo. c. erroris damnabilis Conſt. pecu. Aug. de dec. ver. errore calculi.

and waſt grounds, that never before yielded any profit to the Church: The queſtion is, how of theſe Tithes, and which of the Churches ſhall have them? It is anſwered, that the Pariſh Church of *B.* Shall have theſe Tithes, becauſe they be *Decimæ novalium*, *i.* ariſing of ſuch grounds that never were manured nor yielded before any profit at all to the Church: and the reaſon is, by the foundation of every Church the Tithes in the general of that and every Pariſh, are due to their own proper and peculiar Church *b*. Now, for as much as the Church of *A.* could never before be in poſſeſſion of the Tithes of theſe waſt grounds, becauſe they never were in being *c*, and that the Law is, that *Tantum præſcriptum eſt, quantum eſt poſſeſſum, & non plus, i.* So much (and no more) in preſcription, than in poſſeſſion *d*, And again, in that preſcription is not extended *ad futura, i.* It reacheth not unto Profits of Tithable grounds to come *e*; *Summæ æquitatis eſt*, &c. i. The premiſes conſidered, in ſtandeth with great equity, in this caſe, that the Church of *B.* ſhould reap and receive theſe Tithes *f*.

b c. Cum contingat. ubi glo. & D. D. cod.

c l. Sine poſſeſſione ff. de uſu cap.

d l. Quod meo *fact.* ff. de acquit. poſſeſ. cap. Auditis de præſcript.

e Pan. in ult. notabili. in d. c. Cum. contingat.

f Hoſt. Jo. And in d. c. Cum contingat.

3 But note, it is otherwiſe where one ſhall be in poſſeſſion of the Tithe of Corn, or of Paſture, or of Wood, or any prædial Tithes whatſoever ariſing in the Grounds wherein he preſcribeth, howbeit afterwards there be planted or ſet and ſown in the ſame any ſtrange Plant, Seed, or Herb, that never grew before in theſe Grounds. For example: Millet is ſown, or Saffron, where Corn hath been ſown uſually and ever before and as the manner is, in ſome part of this Land to ſow in their Paſture-grounds the Herb that is called *Glaſtum* or *Iſatis*, *Cæſar* writeth of the old *Britains* that they uſed with this Herb to ſmear their faces, to the end to ſeem terrible to their enemies in war: We call

call it in Engliſh Wadde or Woad. Again Apples, or Nuts, be newly planted where never they grew before: and ſo *Ex nemoribus*, *i.* of Woods that be converted to arable Grounds: the Tithes in all theſe caſes be payable as before they were of the former fruits, and to whom the former fruits were tythable before, namely, to the Parſon or Church that preſcribeth, and the reaſon is, *viz. Præſcriptio eſt realis cenſenda, i. terram concernens, non ſpeciem fructuum perceptorum. i.* Preſcription is real, that is to ſay, reſpecting not the new or never-tithed fruits, but the tithable Grounds that bringeth them forth *g*: In reſpect whereof, that is, of the Grounds, the Tithes whereof forepaſſed have been (without diſcontinuance or other interruption,) continued and poſſeſſed, it is thus affirmed (in theſe Caſes) of preſcription, *viz. Præſcriptio extenditur ad particularitatem juris apprehenſi, ſub unico jure ut univerſali, i.* Preſcription is extended to every particularity of right apprehended, as it were, under that particular, as general *h*. Otherwiſe it ſhould be *in poteſtate ſerentis*, *i.* in the owners power (changing the fruits) to prevent anothers right in the Tithes of his certain, known, and tithable Grounds: contrary to the Rule of the Law, *viz. Id quod noſtrum eſt, ſine facto noſtro à nobis avelli non poteſt*, *i.* that which is mine cannot (without my fact) be taken from me *i*. Look the Statute *De novalibus*, *i.* of Barren, Heath, and waſte grouud, 2 *Ed.* 6. 13. And look the Statute for predial Tithes, and tithable places, 2 *Ed.* 6. 13.

g Acha in c. Cum in tua. de deci. & Ant. But. in d. c. Cum in tua. eod.

h Ant. But. in c. præal.

i F. de reg. jur.

The Second Question.

Decima de
- *Sylvis cæduis*, i. Of Woods fel'd, & preserved to grow again.
- *Lignis*, i. Of Wood not in use, nor apt for Timber, but for firing.
- *Thenitiis agrorum*, i. Of trees planted for fencing of grounds, in Fields, Pastures, and hedge-rows.
- *Turvis*, i. Of turves growing in fenniſh & mooriſh ſoils as in the Iſle of *Ely*

1 Wood of 20. years growth and upwards, whether it be tithable or not? And what of Loppings of timber Trees?
2 When Woods be felled and ſold, who ſhall anſwer the Tithe? the buyer or the ſeller?
3 If the inheritance of a Wood be ſold, that is in arrerages for Tithe, whom the Parſon may implead?
4 Turves amongſt what Tithes they be reckoned?

The Second Queſtion.

1 OF Woods and Wood, contained and ſpecified under the Words *Sylvis Cæduis*, *Lignis*, *Thenitiis agrorum*, ſome of them exceed the growth of twenty Years, and ſome of them not felled within the memory of man, peradventure not of an hundreth or two of years: there groweth a queſtion of ſuch Woods for the Tithes of the ſame: It ſhould ſeem, the Pariſhioner herein may plead for the one (againſt the Parſon) the Statute of *Sylva Cædua*, that exempteth wood of twenty years growth and

and upwards, from the payments of Tithes: and (for the other) both the Statute and preſcription in that the Tithes therein were never performed: interpreting the Statute no further, then the ſtatute explaineth it ſelf: It is anſwered by the Canons alleadged, ſo far forth (with Proteſtation) and no further, than the Statute ſhall permit, that Wood not in uſe nor apt for Timber is Tithable, body or bough, felled or Lopped *k*. As for preſcription it is Anſwered, *Præſcriptio locum habere non poteſt, ubi ille cui jus competit agere non poteſt, cum ceſſet materia de qua experiatur, i.* Preſcription hath no place, where the intereſſed (in his right) can make no demand, the matter ceaſing whereupon he ſhould work: For example, Of Wood never cut, the Tithe could never be demanded *l*. But whether the lopping or boughs of ſuch trees the which the common Laws of the Realm account Timber be Tithable or not, is not yet decided by that Law.

k c. Quamquam. Provin. ang. c. ubi. glo. in ver. cxicis.

l Gloſſ. cap. Sancta eccleſia provin. ang. co. ver. arborum ad hoc l. arboribus ff. de uſufr.

2 It is a Queſtion, when Woods ſo felled be ſold, who ſhall anſwer the Tithes, the Buyer or the Seller? It is anſwered, the buyer *m* ſhall anſwer the Tithe: and the reaſon is, *Decima ſequitur fructus; & cum onere fructuum decimæ tranſferuntur in alterum, i.* Tithe doth follow the fruits, and fruits be tranſlated into anothers right together with the burthen of Tithes *n*.

m Ext de decim e. Paſtoralis.

n c. Preal. eod.

3 Where the inheritance of a Wood is ſold, the Tithes whereof for certain years forepaſſed, by the Seller hath been detained and wrongfully ſubſtracted from the Church, it is a queſtion whom the Parſon may implead: It is holden, he may implead the one or the other at his own choice *o*, but he can recover but of one *p*. But by the Statutes of the Land, the Seller only, in this caſe, ſhall be impleaded, and ſued unto treble Dammages, 2 *Edward* 6. And not the buyer

o Pet. d. c. ancha & D. D. o. cum homines. eod.

p Ar. ad hoc de re jud. c. Bona fideli. d. Glo. provin. Ang. de decim ver. aſportata

buyer who took not the Tithe away.

q ff. Delg 3. l. Ligni Seſt. lignorum verb. mirum.

4 *De Turvis, i.* of Turves, they be Tithable, and comprehended under the word *Lignis*, becauſe they be ſo applyed, that is, for firing *q*, and Reckoned in the number and amongſt the predial Tithes.

The Third Queſtion.

Decima de { *Paſturis*, i. Of Paſture-grounds.

1 If they be fed, how the Tithe ſhall be anſwered?

The Third Queſtion.

1 OF Paſture Grounds, when they be fed, it is a queſtion how the tithes ſhall be anſwered? It muſt be conſidered whoſe the Grounds be, whether the owners of the Cattel that fed them, or a ſtrangers of another pariſh. In the firſt caſe, if the Cattel be ſuch that yield profit to the Church, the tithe is ſatisfied in the fruits of the beaſts *r*. In the other caſe, it muſt be conſidered of the ſtranger, whether he ſelleth or giveth frankly to the owner of the cattel, the Paſturage of his Grounds: the ſtranger if he ſell it, is anſwerable for the tenth peny: the Pariſhioner, if freely he receiveth it, is anſwerable for the eſtimation *ſ*. But note, the eſtimation ſhall not be anſwered, but where the grounds with beaſts be fed, *Nullam Eccleſia utilitatem aliàs, &c. i.* yielding otherwiſe no profit at all to the Church: of which ſort be Horſes, Oxen, & ſuch other barren beaſts. In other profitable cattel, the tithe is extended (as aforeſaid) to be anſwered in the fruits *t*. But note, that generally the occupier of the paſture is to pay the tithe, and ſo is the cuſtom.

r. Inno. ext. de decim. c. commiſſum.

ſ. Prea. eod.

t Juxt. notat. per. Inno. ut ſup. glo. ver. dividenda prov, ar. co.

The

The Fourth Question.

Decima de {*Fenis*, i. Of Hay.

1 Hay, of what places? and what tithe it is?

The Fourth Question.

DE *Fenis*, *i.* of Hay, according to the exposition of the word the tithe is payable, *viz.* of the grass withered or green, perceived and taken in Meddow, Pasture, great or small, or in other place, places, or Angles, (so within the limits of the Parish) whereſoever *u*: Question hath been moved of this Tithe to this effect, that is to say, whether it be predial or personal? It is answered to be predial *x*: For howbeit the industry and labour of the person may seem and be alleadged more to prevail (as they term it) in the making thereof then the nature of the ground, yet in that it is perceived of the ground, and gathered of, and from a place certain, in some one or other known, certain, and limited Parish, it is tithable as other predial tithes be *y*, that is, to that Parish Church where the grounds do lie: Without Deduction of charges.

u Prov. ang. c. quoniam propter volumus.

x Ancha. cap. pervenit. eod.

y Ad hoc epa. floralis ext. eod.

The Eighth Question.

Decima de {*Lana*, i. Of Wooll.

1 Whether the sheep of Sons and Daughters be tithable (or not) with their Fathers Flocks wherein they do go?

2 Where Sheep be removed from one Parish to another, how the Tithe is divided by rate and proportion of time?

3 If strange sheep be brought to another Parish and there be clipped and shorn, how they be tithable there?

The Fifth Question.

1 OF profits and increase of such profitable Beasts before mentioned, and specified in particular under the words *Lana*, *Agnis*, question is moved to this effect; there be in one Family divers persons having to the number of 3, 5, 6, 8, or 10. Lambs or fleeces of Wooll more or less; their sheep be depastured, and so be reputed part and parcel of the flocks wherein they walk, couch and do feed: The question is of their Tythes, Whether they be Tithable with the flocks, or in their several parcels? It is answered, In their several parcels; and the reason is, *Animalia quæ gregibus alienis admixta sunt, remanent eorum propria non quorum sunt greges, sed quorum sunt animalia: i.* Beasts intermingled with other mens flocks, do remain notwithstanding proper and peculiar unto those, not whose be the flocks, but whose be the beasts z. Howbeit in Countries where persons such as Sons, and Daughters, in their Fathers power, government, maintenance, and finding, shall have such Beasts or cattel intended in Law, and counted *in bonis profectio & adventitio, i.* acrewing and growing by their fathers or friends by the Mothers side, by gift procurement, or otherwise, in which Beasts their Fathers are interessed, in the use and fruits, the bare property remaining to the Children, the Tithes of these Beasts shall be reckoned with their fathers *a*, and not in their several parcels,

z c. Cle. c.

a Arg. ad hoc. ff. per quas personas nobis Sect. 1.

parcels, and the reaſon is, *Ut ipſarum rerum quæ in fructu ſunt & patri adquiruntur, pater ſolvat decimam*, &c. *i.* of things in increaſe and procured to the Father, So ſhall the Father be anſwerable for the Tithe *b*; the property notwithſtanding reſerved to him or her to whom it belongeth, his Son or Daughter. But for that *Patria Poteſtas*, *i.* that Legal power and prerogative of Fathers, it is not in uſe; neither yet *Profectitium* nor *Adventitium peculium* are known in *England*; the Beaſts of Sons and Daughters here mentioned (in reſpect of their Tithe) ſhall not be reckoned with their Fathers Cattel, but as the cattel of other ſtrangers: and what is given by the Father to the Son or to the Daughter, is their own, except the Father by expreſs words ſhall reſerve the fruits of ſuch cattel ſo given to himſelf.

b Glou. prou. ang. de dec. ver. decima lanæ.

2 Where ſuch cattel be removed from Pariſh to Pariſh, and queſtion be made, What proportion of the Tithes is due to each Pariſh, the cuſtom of the place muſt be obſerved: otherwiſe the Law is, *viz. Quælibet Eccleſia pro rata temporis portione decimas percipiet*, *i.* Every Church ſhall receive its Tithes by rate and proportion of time: but the queſtion is, of what ſpace this rate and proportion is meant? It is anſwered, of xxx. dayes, and ſo to be rated by Thirties from thirty to Thirty, *Minoris triginta Dierum ſpatio in rata temporis minime computando*, *i.* under or leſs then the ſpace of xxx. dayes not to be counted in rate and proportion of time *c*: for example, the Pariſhioner hath fourty ſheep which yield him at ſhearing day fourſcore pounds of Wooll: that Church is intereſſed intirely in the Tithe, in whoſe Pariſh the whole year they couched and depaſtured: that Church in the half, that is, in the Tithe of 40. pounds where the half year

c Text. provin. ang. ca. quoniam ut audivimus. eodem.

year they couched and depaſtured: that Church in twenty pounds where they couched three moneths and depaſtured: and ſo ratably four moneths, five moneths, more or leſs accordingly: and that Church in whoſe Pariſh they couched and depaſtured but one moneth, that is xxx. dayes, but in the tithe of the twelfth part thereof, that is, of the whole Fourſcore pounds, but the tenth of ſix pounds and half, and under thirty dayes as afore is ſaid, no allowance at all *d*. But note, if the whole time they couch in one Pariſh, and depaſture in another, the Tithe ſhall be divided *e*.

d d. c. ver ſed. ſi ovet.
e Sed. ſi vero. conſt. præal.

3 If peradventure they come from a ſtrange and unknown place to any Pariſh to be clipped or ſhorn, there the Tithe muſt be paid, except it may appear the ſame to be ſatisfied to the Church whence they came *f*.

f Sed. & ſi o. ves conſt. eod.

The Sixth Queſtion.

Decima de
- *Agnis*, i. Of Lambs.
- *Vitulis*, i. Of Calves.
- *Porcellis*, i. Of Piggs.
- *Pullis*, i. Of Colts.

1 Whether the Parſon may expect his Lamb (the next year following) if the Pariſhioners number in any one year amounteth not to ten? And what, if he faileth then?

2 When Ewes be removed, and other ſuch cattel and Beaſts from one Pariſh to another, how the ſeveral Churches be intereſted in the Tithe of their Lambs, and ſuch other increaſe.

3 Of

3 Of Lamb, Calf, Kid, Colt, Pigg, &c. and when is their Tithable time?

The Sixth Queſtion.

1 FOr Tithes in profitable beaſts, the Parſon may expect the fall of the tenth the next year following, if the number in any one year amounteth not to ten, according to the text of the conſtitution *g*, *viz. Vel expectet rector uſque ad alium annum donec plenarie decimum agnum poſſit recipere, ſi maluerit: i.* Or let the Parſon (if ſo he had rather to do) expect another year, till he may fully receive his tenth Lamb. Now it falleth out the Parſon uſeth his Liberty and refuſeth his Lamb at ſeven, and his half pence at Six, and the Pariſhioner the year following hath never a Lamb at all: The queſtion is, how the tithe ſhall be ſatisfied? It is anſwered, (in this caſe) the Parſon hath no remedy in Law: and the reaſon is, *A principio male eligendo fuit in culpa, ergo in hoc ſibi imputetur, i.* He made his choice but ill at the firſt, which was his own default, and therefore he muſt blame himſelf *h*. Yet *Lynwood* affirmeth in this caſe, That in regard of the Church, in reſpect whereof tithes ought not to be loſt, and in regard of the party himſelf, the owner of the fruits, who without ſin cannot detain by any colour their righst from the Church, though the Parſon (for his own ſake) cannot relieve himſelf *Jure Actionis, i.* By right of action: yet for the Churches ſake *Officium Judicis, i.* The his Office may may be deſired *i*.

g Text. pro. vin. ang. co. quoniam propter decim.

h Arg. ad hoc inſt. quod cum eo qui in alt pot. ſeſſ. cæterum autem & glo. conſt prov. præal. verb. poſſit recipere

i c. verb. conſt. præal.

2 Yeaws be ſometimes removed from grounds to grounds, from Pariſh to Pariſh; the queſt is, (in this caſe) of the right of their tithes: It is thus anſwered,

k c. Quoniam audivimus const. Provin. ang. Sect. agni. eod.

swered by the text Law k *viz.* The tithe of Lamb is payable in manner and form as be the tithes of calves and colts, and such other like tithable increase, mentioned to be Pigg, Kid, *&c.* of which the Law determineth thus, *viz. Habita ratione ad loca diversa ubi gignuntur, oriuntua, & nutriuntur, & ad moram quam traxerint eisdem, particulariter decimentur, i.* They be tithable by rate and proportion (particularly) to the several Churches in whose Parishes they were ingendered, brought forth, and nourished *l*: for example, The Yeaw goeth five moneths with her Lamb, they put them together the Male and the Female the last of *September*: where they coupled they remain one moneth: they be removed to a second Parish, to a third, to a fourth, and to a fifth, where they be depastured several moneths: in this case, *Unusquisque pro tempore suo, i.* Every Parson for his time *m*, that is (the several times and places considered) the several Churches in the Tithes have several rights accordingly *n*.

l Ca & Sect. præ.

m Glo. c. & Sect. præal. verb. particulariter.

3 And touching the question of their tithable time, it is answered thus, *Fœtus ablatatus esse debet antiquam præsletur, i.* The must be, weaned, weanable, or of strength to live without the dam *o*, except custom hath observed therein a time certain, the which where so it is, there it must be continued. Look custom, the 6.

n C. & Sect. pæx.

o Rebuff. co. q. 6. un. 30. Inno. host. & alii in ca. cum homines eod.

The seventh Question.

Decima De { *Lacte, i.* Of Milk. / *Caseo, i.* Of Cheese.

1 Milk and Cheese how? and when they be Tithable?

2 If

2 If Cattel feed in one Pariſh and couch in another, how the profits be tithed?

3 Where Cheeſe is Tithable, and the number of Cattel ſo ſmall that none can be made; how the Tith ſhall be be anſwered for their ſmall proportion?

4 Where Milk of Sheep is Tithed in kind, how they be Tithable (for their Paſture) in the Winter, when they do yield no ſuch profit?

The Seventh Queſtion.

MIlk and Cheeſe, *viz.* of Kine, of Sheep, or of Goats, they be reckoned as *In pecudum fructu, i.* In the increaſe of ſuch cattel *p*, as alſo be *Lana & Fœtus, i.* Wooll, Calf, Kid, and Lamb, whereof mention is made in the fifth & ſixth queſtions before; and touching queſtion herein to be made, ſuppoſe of the Milk when it is perceived and taken, of the nine parts thereof (when the tenth is deducted) there be made ten Cheeſes, it is anſwered, in this Caſe, The Cheeſes are not to be Tithed *q*: for Cheeſe is not tithable but where milk is not tithed: and ſo of the other: briefly, they be tithable either of them *tempore ſuo, i.* In their ſeaſons *r* and ſo long and ſo ſoon, as either Milk or Cheeſe ſhall be perceived and taken (in their kind) by the Pariſhioner: there can be no cuſtom of intermiſſion to the contrary. Look Cuſtom, the 3. And what the Law of cuſtom may be in this caſe, followeth here the 3.

p. ff. de uſufr. l. in pecudum inſt. de re. di. Sect. in pecudum.

q de reg. jun. in 6.

r c. Quoniam propter præ. de decim.

2 Sometimes theſe cattel be depaſtured in one Pariſh, and coucht in another, in this caſe it may be demanded, What the Law determineth of the tithe? It is anſwered in the text Law, *viz. Quod inter Rectores dividatur, i.* In this caſe the Parſons ſhall divide *ſ*.

ſ c. Quoniam ut audivimus, præal. Sect. decima.

t c. quoniam propter. præ. Sect. quid vero.
u in cap. & sect. præal. verb. modicitatem.

3 Question also herein is moved further in Law *t*, where such Tithes be payable in kind, and the number of Cattel so small, as *Lynwood* supposeth *u* of some one or other Parishioners, which have not only three, two, or peradventure but one only Cow, and those, or that to be Milked but *alternis diebus*, *i*. But each other day, by reason whereof the Parishioner can make no Cheese at all: what is the Churches Right in this case? It is answered in the Text Law *x*, *viz*. *Consuetudini locorum duximus relinquendum*, *i*. The custom of the place must be observed: provided the custom be, that *Certum quid solvatur*, *i*. that somwhat be paid in consideration and liew *y*: for custom herein (as in all other cases of tithing) cannot exclude *solutionem decimæ*, *i*. It cannot intirely take away the payment of the Tithes of such profits as arse, as may appear in custom the third, only it may limit *solutionem decimæ*, *i*. custom may moderate the payment of Tithes. Look custom the fourth. Hither (by a constitution provincial of *England*) also be referred Calf, Colt, Pigg, and such like, that is, when their number is so small that they cannot be Tithed: it is the Chapter *Quoniam ut audivimus*, and Paragraph *quid vero*, which constitution *Lynwood* affirmeth upon the same Paragraph, that it extendeth not to the Wool and Lamb, but citeth there another express and peculiar Ordinance for the same, *viz*. If the Parishioner shall have six Lambs or under, he shall yield for his Tithes for every Lamb a half peny: if seven Lambs, he shall yield a Lamb for his Tithe, and receive three half-pence: if eight, a penny: if nine, the Parishioner (only) receiveth a half-penny of the Parson, or the Parson may expect according to the sixt question before. *Et ita intelligendum est de decima Lanæ*. *i*. The same Grdinance and provincial constitution

x c. Sect. præal in fin.
y extr. e. ti. c. in aliquibus.

tion is had of Wooll. It is the Chapter *quoniam propter*, and Paragraph *De nutrimentis*, in the Title of Tithes.

4 *Post festum, &c. i.* after the Feast of Saint *Martin* in Winter, sheep be eftsoons removed from Parish to Parish, or else they do continue in one and the same Parish from that Feast, till shearing day ensuing: the question is, of their Tithes? It is answered, they be tithable thus, *viz. Habita ratione ad numerum ovium Pascua estimentur, i.* The Pasture in this case must be considered (for want of their Milk in this season) by the head and number of the sheep that depastured in them z, and so shall the Tithe be rated and yielded *a*: by rate and proportion of time (by the moneth *b*) as *Lyndwood* inferreth, and as it is said of thirty dayes, and by thirties, and so from thirty to thirty, as in the first question before of Wooll.

z e. quoniam ut audivimus præal. *Sect.* quod si prov. ang. c.
a c. *Sect.* præ. c.
b Gloss. c. *Sect.* præal. verb. estimentur.

The Eighth Question.

Decima de { *Fructibus* / *arborum*, } i. Of Fruits of Trees.

1 Of Apples and other such Fruits of Trees, what of their Tithable time?

The Eighth Question.

1 FRuits of Trees, *viz.* Apples, Pears, Wardens, &c. the question is of their Tithable time: it is answered, *Statim fructibus collectis*, i. So soon and immediately when the fruits shall be gathered *c*, and the Reason is, *quia minus solvit, qui tardius solvit, i.* He dimi-

c c. cum homines eod.

d l. ſi cui in fine ff. de verb. ſig.

miniſheth his duty that delayeth the time *d*: if therefore the Pariſhioner ſhall gather his fruits, and neither pay the Tithes preſently, nor moniſh the Parſon to receive them, but ſubſtract them, or that (otherwiſe) they be impaired or loſt, *tenebitur*, ſaith the Law; that is, The Pariſhioner is Bounden *e*: to what ſatisfaction look the Statute, 2 *Ed.* 6. 13. For fruits be Tithable, and prædial *f*.

e c. cum homines præ. eod. text.

f c. ad Apoſtolice. c. pervenit eod.

The ninth Queſtion.

Decima de { *Seminibus*, i. Of Seeds: Hemp, Flax, Onions, Rape, and ſuch like.
Herbis, i. Of Pot-Herbs.
Curtilagiis, i. Of places adjoyning to Manſion Houſes, applyed to Seeds and Herbs.

1 Of Seeds and Herbs, what manner of Tithes they be?

Tee ninth Queſtion.

SEeds and Herbs, *viz.* of Flax, Millet, Hemp, Leek, Onion, Rape, Percely, Sage, Mint, Rue, *&c.* comprehended under the words *Seminibus*, *Herbis*, *Curtilagiis*, they be tithable *g*, as they be perceived and taken in Gardens, or in the Fields, either of the Seed, or of the Herb before the ſeeding-time *h*, *Niſi parochiani competentem fecerint redemptionem*, *i*. Except the Pariſhioners ſufficiently ſhall redeem or compound for the ſame *i*. Theſe be *Minutæ Decimæ*, *i*. Small Tithes according to the Evangeliſt *k*, *Ye tithe mint and rue, &c.* And therefore in them no great queſtion to be made.

g c. quoniam propter præ. prov. ang. c.

h Concor. ext. eo. c. ex parte canonicorum

i c. quoniam propter dræ.

k Lu. 11. Ho. c. ex multiplici. eo.

The

The tenth Queſtion.

Decima de { *Pannagiis*, i. Of Maſt, or Beech, or *ſylvarum*, Oke or ſuch like.

1 Of Maſt, what, when it is given? and what, when it is ſold?

The Tenth Queſtion.

1 BY the Chapter *Sancta Eccleſia*, in the provincial Conſtitutions of *England*, and title of Tithes, the Tithes of Maſt and of other ſuch Wood and Wild Fruits, be payable, *viz.* *Si vendantur, i.* If they be ſold *l*: that is, (as the gloſs inferreth) of the tenth peny, if they be ſold; otherwiſe, that is, of Swine frankly and freely received and fed, without any conſideration of charges to the owner in this caſe *Tranſeunt fructus cum onere, i.* The fruits do paſs with their charges *m*, *viz.* with the burthen of Tithes.

l c. Sancta eccleſia pre. *m* glo. in d.c. verb. ſi vendantur. ubi ad hoc exteo. c. paſtoralis, & Inno. ext. c. commiſſum. c.

The Eleventh Queſtion.

Decima de { *Molendius*, i. Of Mills forced by Wind, Water, &c.
Vivariis, i. Of Parks, Warrens, Pools, Ponds, &c.
Beſtiis guarenarum, i. Of Wild Beaſts under cuſtody, *&c.*
Columbariis., i. Dove-cotes, or houſes
Apibus, i. Of Bees.

1 What

1 What manner of Tithes they be? And how they be tithable?

The Eleventh Queſtion.

1 QUeſtion hath been moved of the Tithes of Mills, Parks Ponds, Warrens, Dove-Houſes, and Bees, to this effect, *viz.* Whether they be predial, or perſonal? It is anſwered, they be predial, and tithable without deduction of charges *n*, for the reaſon alleadged in the fourth queſtion before. And they be tithable thus; that is to ſay, not the tenth of the Rent for Mills (as they term it) the tenth peny; nor for Bees, the tenth Bee, or ſwarm, or Hive: but *De proventibus molendinorum, i.* The tenth meaſure of Corn for Mills *o*; and ſo for Bees, the tenth meaſure of honey, the tenth weight of wax, briefly, *De cera & melle, i.* Of hony and wax *p*. And the Law and Reaſon is of theſe tithes, eſpecially of Mills, as of other predial tithes, whereof (for example) it is ſaid, *Tranſit herba paſta cum onere ſuo ad dominum beſtiarum, i.* Where grounds or paſtures be demiſed, or their herbages ſold, the owner of the Beaſts is chargeable with the tithe *q*. Eſpecially for the practiſe of *England*, look what is ſaid in the third queſtion before. Hither be referred Parks, Ponds, Dove-houſes, &c. for *Fructus tranſit cum onere ſuo, i.* Fruits be liable to their charges. Look in the ſecond queſtion before, 2.

n D D. in cap. paſtoralis. & aliis ca. eod.

o c. quoniam propter, præ. Sect. de proventibus & ibi glo. verb. integre.

p Hoſt. & alii. c. nuutios. c.

q Ad hæc. ff. de uſuſt. uſufructu legato. & item ſi fundi.

The Twelth Queſtion.

Decima de { *Aucupiis*, i. Of Fowlings. / *Venationibus*, i. Of Huntings. / *Piſcationibus*, i. Of Fiſhings.

1 Beaſts, Fiſhes, Fowls, how (diverſly) they be tithed, (diverſly) conſidered?

The Twelfth Queſtion.

1 THe profits that be mentioned and contained under the words *Aucupiis*, *Venationibus*, *Piſcationibus*, *i.* Of Fowlings, Huntings, Fiſhings, queſtions have been moved of the tithes of the ſame, *viz.* The pariſhioners of *N.* one of them fowleth, another Hunteth, the third Fiſheth, in the Fields, Grounds, and Rivers of *B.* The Queſtion is, of the tithes, of their advantages taken, and which of the Churches be intereſſed in the ſame, *viz.* whether the Chuch of *N.* where the pariſhioners inhabite; or the Church of *B.* where the profits were taken? It is thus anſwered, *viz.* If the pariſhioner had, of the owners of the places, frank, and free liberty to Fowl, Hunt, and Fiſh, the Church of *N.* that is, their own pariſh Church ſhall be intirely intereſſed in them, as in perſonal tithes *r*: but if any conſideration be required, either in Money, or in part of their gain, that profit only received by the owner, is predial and tithable to the Chuch of *B.* that is to ſay, in that pariſh where the Fields, Grounds, and Rivers do lie *ſ.* *De cæteris vero*, *i.* Of the reſidue, that is to ſay, of the clear gain of theſe Beaſts, Fiſhes, and Fowls, all charges and expences,

r Inno. in. cap. non eſt. eod. & ibi Hoſt. Verb. de venatione.

ſ Inno. in & Hoſt. cap. & verb. præd.

pences, in, about, belonging, and concerning these profits taken, deducted *t*, the parishioners that took them be chargeable withall to their parish Chuch of *N. u.* mentioned before: and the reason is, the Fowls, Beasts, and Fishes be taken *artificio, ministerio, & opere hominis, i.* By the Art only, Labour, and industry of man, from whence proceedeth personal Tithes *x*, payable only where the Parishioners inhabit *y*. But if the consideration mentioned here, required and taken by the owners, cometh not by Art and Industry, but *Ex humo, i.* By way only, and means of the ground *z*, from whence do arise all predial Tithes *a*: payable only in the place and Parishes within whose bounds and limits they are *b*. Thus they be divers, these tithes, diversly respected, that is to say, predial or personal; note the difference. Note also, that where such tithes be demanded, it is where such Art, Industry, and Travel is answered and rewarded, not with pleasure *c*, but with profit *d*. Question hath further been moved of these profits and advantages aforesaid, to this effect: *viz.* the Parishioners mentioned of *N.* had frank and free leave and liberty to Hunt, Fish, and Fowl within the fields, grounds, meddows, rivers, and running streams of *B.* mentioned before: they took, preserved and reserved alive their Beasts, Fowls, and Fishes, and so they conveyed them to certain their own proper and private Grounds within the Bounds, Compass, and Limits of another Parish, then either of *N.* where they dwell, or of *B.* where they took them: they include them (there) these Beasts, Fowls, and Fishes, and compass them within Parks, Warrens, Ponds, Pools, Houses, such as be mentioned and comprehended under the words *Vivariis, columbariis*, in the eleventh question before. Thus they feed and nourish them, and they breed

t D.D. Præal. in ca. pastoralis eod.
u D.D. in d.c. Non est ibi idem not. per. D.D. præ. in decimis Avium & serarum gloss. in pre. c. quoniam propter. Sess. de piscationibus provin. ang. eod. verb. debito modo.
x c. ad apostolice. eod.
y c. quæsti. 16. q. 1.
z Anno. Host. in c. non est præal eod. verb. de venatione.
a c. 2. c. ad apostolice c. pervenit. præ. eod.
b cap. fin. de parochiis.
c Rebuff. eod. q. 8. nu. 17.
d Ancha. in præal. c. non est co. col. 2.

breed, and increaſe in their kinds: now, in that theſe incloſed and limited places do alter and change (in Law) the nature of the profits of the nouriſhed Creatures within them *e*, which of the Churches have right to the Tythes? It is thus Anſwered, *viz.* They were included at the firſt as they were taken, that is by Art and induſtry of Man *f*: howbeit they increaſe not by induſtry and Art, but by the nutriment and nouriſhment of the Waters and Grounds, where they live *ex ſola gratia Dei i.* Of the meer grace and bounty of God *g*: and therefore for the rate, value, and proportion of themſelves, they remain theſe profits as they were taken at the firſt, that is perſonal: Tithable to the Church of their Pariſh that took them *h*. But their increaſe is prædial, Tinhable to the Church within whoſe limits they be, and be fed, and nouriſhed *i*. The circumſtances of theſe Tithes mentioned in theſe caſes, according to that worthy and of famous memory *Hoſtienſis*, do make them neither meerly predial, nor meerly perſonal, but mixt Tithes *k*: payable notwithſtanding as predial and perſonal diverſly reſpected as aforeſad. So, conſider thus, (briefly) of theſe Tithes, that is to ſay, conſidered as they be included within compaſs, limits, and bounds (from their natural Liberty) tyed and reſtrained to the ſame, as in Ponds, Parks, Warrens, Houſes, and in ſuch like limited places, they be predial Tithes: but conſidered as they enjoy (at their wills) their natural liberties, as Fiſhes, the Sea; Fowls, the Air; and Beaſts, the Fields; in that that they are not reckoned of any place certain, their Tithes be not predial but perſonal: touching therefore queſtion herein to be made, to what Churches they be due? It is anſwered, As of predial and perſonal Tithes: that is, the one to that Church in whoſe

e Rebuff. con. nu. 14. & 15. ad hæc Inno. & Pan. in d. c. non eſt.

f Inno. & Hoſt. in d. c. non eſt.

g D. D præ. in c. c. non eſt.

h Pan. in cap. præal. & ibid. An. de intellectu Hoſtienſis ad idem.

i Pan. & *D. D.* in d. c non eſt

k Hoſt in ca. præal.

Parish these limited places aforesaid do lie that do make them predial; the other to that Church in whose parish the Parson doth inhabit that maketh them personal. And this is the difference.

The Thirteenth Question.

Decima de { *Cygnis*, i. Of Swans. / *Aucis*, i. Of Geese.

1 Of Swans, Geese, Ducks, and how they be considered of.

1 SWans, Geese, and Ducks be distinguished thus, *viz.* Whether they be *Volantes*, *i.* Whether they be wild, and do flie; or be tame, or not: this considered, the profits be tithable accordingly: For example, The Cygnets, *si nascuntur in loco certo, & suscipiuntur à loco certo*, *i.* If they be brought forth, and so be taken in and from a certain and known place, they be predial and tithable, as predial tithes; if from incertain places, they be personal, and so they be tithable, *viz.* as personal tithes *l*. It is affirmed of them, as of Beasts, Fowls, Fishes *m*, in the question last before. Hither by the Chapter *Sancta Ecclesia*, in the Provincials of *England*, be referred Geese and Ducks.

l Glossa in c. sancta Ecclesia præ. Sect. 1. ver. c. ignorum.

m D. D. ext. c. tit. c non est.

The Fourteenth Question.

Decima de { *Ovis*, i. Of Eggs.

1 Of Eggs, where tithes be yielded, whether Chickens be tithable there?

The

The Fourteenth Queſtion.

De Ovis, *i.* Of Eggs, it hath been moved whether they be Tithable in ſuch places where Tithes be yielded of Chickens? By the written Law it may be anſwered, as of Milk and Cheeſe in the ſeventh queſtion before, the 1. Howbeit Cuſtom in this caſe prevaileth, as experience ſheweth in ſome parts of this Land *n*.

n Gloſſ in d. c. ſancta eccleſia. cap. quoniam ut audivimus. verb. pulſi

The fifteenth Queſtion.

Decima de { *Artificiis*, i. Of Crafts, and manual Occupations. / *Negotiationibus*, i. Of trades by wares, Merchandiſe, &c.

1 Of perſonal Tithes, what time, place, and perſons, be required in them; and of whom the Church is forbidden to receive either perſonal Tithe, or Oblation:

The Fifteenth Queſtion.

1 TRrades, Crafts, and Manual Occupations, they be perſonal, and of the profits do ariſe meer perſonal Tithes: touching therefore firſt their Tithable place, it is anſwered in the Twelfth Queſtion before. Of their tithable time it is anſwered, *in fine anni*, *i.* They be payable at the end of the year *o*, and as our cuſtom is, at *Eaſter*. Of perſons that be chargeable with theſe perſonal tithes, it is anſwered, Of ſuch perſons, which of cuſtom have or of right ought to have paid their perſonal tithes *p*.

o Gloſſ. in c. revertimini. verb. annus.

p 2. Ed. 13.

Look

Look the Summaries of the Statues enſuing. There are of theſe perſonal Tithes (in divers caſes) *opinionum conflictus, i.* Diverſities of opinions *q*: but herein they agree, *viz. Hæ Decimæ perſonales, magis in difficultate, & ſubtilitate, quam utilitate conſiſtunt, i.* They are theſe perſonal tithes, more intricate than profitable *r*: only this (to conclude) muſt be noted, that is to ſay, all perſons (conſideration had, as afore is ſaid) be bounden to offer their perſonal Tithes to the Church, but the Church is forbidden (of all perſons) to receive them *ſ*: For example, The Harlot, the Robber, the Uſurer, &c. they be not exempted; but the law rejecteth them, their perſonal tithes and oblations: *Non inferas mercedem meretricis, &c. i.* Thou ſhalt not bring the hire of an Whore, nor the price of a dog into the Houſe of the LORD *t*: And for the other, *Quæſtus ſit ex peccato, i.* Their gain ariſeth of ſin: the Church is therefore forbidden to receive of them, *Ne ipſorum videatur approbare turpitudinem, i.* Leſt the Church ſhould ſeem to approve their iniquities *u*.

Here do end the Queſtions of Tything, moved (in times paſt) and anſwered; and which be now urged (ordinarily) and decided at this day.

Of Compoſition, Tranſaction, Cuſtom, Preſcription, Priviledge; and how they prevail in Tything.

Of Compoſition.

COmpoſition (by the Canon Laws) holdeth or faileth diverſly reſpected: and it is firſt to be conſidered of, as it hath been made and had *inter Clericos, i.* Betwixt Clerks themſelves; and then it hath tended

q Rebuff. q. 3. nu. 44. & Abbi. cit. Bur. in c. parochianos infin. eod. *r* Hoſt. in capaſtoralis in fin. eod. & 10. detur. cre. in c. revertimini ptæal. nu. 12. *ſ* ver. ad ſeptimum 16. q. 1. Hoſt. in ca. ex tranſmiſſa. eod. arg. ca. Oblationes. 90. diſt. Deut. 23. *t* c. miror. 17. q. 4. *u* c. ſi tantum 6. q. 2. hæc. Rebuff. q. 5. nu. 18. 8. 19.

tended either *Transferendis decimis, i.* To the Translating of Tithes from one Church to another: *Vt quæ uni Ecclesiæ decimæ debentur, alia recipiat, i.* That one Church receive Tithes which be due to another. And the composition herein holdeth *a*, and the reason is *Non refert quæ Ecclesia decimas habeat, modo Ecclesiæ persolvantur, i.* It forceth not of Tithes (so the Church enjoyeth them) what Church receiveth them *b*. Howbeit, the nature and kind of the Tithes thus translated, must be considered, namely, whether they be personal or predial Tithes; if they be personal, the composition that translated them holdeth not, and the reason is, *Ne occasio tribuatur vagandi & divina extra parochiam audiendi, i.* Lest occasion should be given to the people, of wandring, and hearing of divine service from their own Parish Churches *e*.

a c. 2. d. transl. c. dilecti. c.

b c. 3. eod.

c c. 2. sup. ti. 1. Rebuff. in q. 13 un. 17. de decim.

2 If they be predial, the composition holdeth, *Inita cum authoritate episcopi, i.* The Authority and Approbation of the Bishop of the Diocess thereunto had; which composition shall bind both the Clerk and his Successors *d*: otherwise without the Bishops confirmation, it shall only bind the Clerk that yielded thereunto, and not touch his Successours at all *e*.

d c. 2. & c. veniens de tranſ.

e c. veniens 8. præal.

3 Or the composition hath tended *Remittendis decimis, i.* To the remitting of Tithes, *Vt tota decima Clerico remittatur*, namely, That to a Clerk Tithes should be intirely remitted, this composition holdeth not *f*, and the reason is, *Decima omnino tolli non potest, i.* Tithes may not wholly be taken away *g*?

f Rebuff. q. 13. nu. 23. de decim.

4 Secondly, Composition must be considered, as it hath been said, *Inter Laicos, & Rectorem, i.* Betwixt Laymen and Clerks, which composition also must be respected thus, namely, whether it be *De præteritis decimis,*

g q. nu. præ. Rebuff.

Of tithes forepaſſed; or *de juturis decimis, i.* Of tithes to come: In the firſt caſe, this compoſition alſo holdeth, yea, though it be *Gratuita, i.* Without conſideration or allowance at all *h*: In the ſecond caſe, if the compoſition be, *Ut aliquas decimas non ſolvant, i.* That Tithes be not paid at all, *Non eſt admittenda, i.* Not to be admitted *i*. If the compoſition be, *Ut integra decima non ſolvatur, i.* That Tithe be not wholly paid, but in part; it holdeth: howbeit not otherwiſe but confirmed by Authority Supream: for the Biſhops confirmation herein ſufficeth not, for none could exempt from Tything, nor diminiſh the quantity of the ſame, but the Supream power *k*, as it followeth in priviledge.

h c. ſuper. de reb. eccle. non alien.

i Rebuff. q. 13 præal.

k Text in ca. venerabilis de conſeſ. & ibi Pan.

Of Tranſaction.

TRanſaction and Compoſition do differ in this, the one is *Gratuita conventio, i.* A voluntary, frank and free agreement of things not contended for, which is ſaid to be compoſition: the other, *de re dubia & lite incerta (aliquo dato vel retento) pactio, i.* A forced Covenant or Agreement (for ſomwhat given or received) of things litigious, in certain, and doubtful, in controverſie *l*.

l E. de tranſ. C. e. c. ſuper, eo.

2 It muſt be conſidered of Tranſaction as before it hath been ſaid of Compoſition betwixt Lay-men and Clerks. Look, Compoſition 4. Tranſaction (if it be of Tithes fore paſſed) holdeth; yea, though the conſideration had, be of things meer temporal: and the reaſon is, *Fructus decimarum ſunt temporales, i.* The profit and fruits of tithes be reputed temporal *m*. Tranſaction, if it be of tithes to come, muſt be reſpected

m veſtm. de loco.

ſpected according to the time and term it is made for, namely, whether it be made *in tempus modicum, i.* for a ſhort and limited time; or *in perpetuum, i.* (without limitation) for ever In the firſt caſe it holdeth with the Biſhops approbation and authority *n*; in the other caſe it holdeth alſo if the right and intereſt of the Church be doubtful, as where the Pariſhioner pleadeth againſt the Church, Exemption or Priviledge. But where the right of the Church is *Liquidum, i.* where the Chuches right is clear, Tranſaction holdeth not otherwiſe then by conſent and authority ſupream *o*. Tranſaction is often taken for compoſition, and one for another *p*.

n Arg. c. 1. & 3. ſup. de iis quæ fiunt a capit.

o Not. ca. a nobis eod. Pan. e. ſtatuimus de tranſ. *p* c. venien. e.

Of Cuſtom.

CUſtom by the Canon-Laws holdeth or faileth, diverſly reſpected: if it be, *De transferendis decimis predialibus, i.* if tranſlating of tithes prædial (as afore hath been ſpoken in compoſition) it holdeth *q*.

2 If of perſonal Tithes, as alſo before hath been ſaid in compoſition, it holdeth not *r*.

3 Cuſtom *De non ſolvendis decimis, i.* Of not yielding of Tythes at all, holdeth not, and the reaſon is. *Juri naturæ & divino contraria eſt, i.* Such a cuſtom is contrary both to the Law of Nature, and the Law of GOD *ſ*.

4 Cuſtom *De minori quantitate ſolvenda, i.* Of yielding leſs than the tenth in quantity, holdeth *in Perſonalibus, i.* in perſonall Tithes only, after the opinions of ſome *t*. but of others in predial alſo *u*; and practice alſo ſheweth the ſame.

q c. cum ſint homines. & c. ad apoſtolice. eod.

r c. præal.

ſ DD id c. fi. de conſuetud.

t c. in aliquibus. & ubi inne. pan. & alii eod.

u Rebuff. q. 13. nu. 46.

x Hoſt. in ſum. Seſt. fin. eod. y D. D. in ad. apoſtolice præal. z Rebuff. q 13. præal. nu. 40. 50, 52.

5 Cuſtom *De loco, i.* Of place where Tithes ought to be left, holdeth *x*.

6 Cuſtom *De tempore, i.* Of the time of Tithes to be yielded, holdeth *y*.

7 Cuſtom *De modo, i.* Of the manner and form of yielding of Tithes, holdeth *z*.

Tithe, what it is, and of how many ſorts.

Tithe of the Latine, Decima, *is, a tenth part or portion of Increaſe, commanded unto* Moſes *by whom it was delivered (at the appointment of God) to be paid to the ſons of* Levi, *for their Miniſtery wherein they ſerved in the Tabernacle* a: *in Law defined thus; viz.* Omnium bonorum licite qnæſitorum quota Pars Deo, divina conſtitutione, debita, *i. Of all lawful increaſe and gain a certain part (by conſtitution Divine) due, and appertaining to God* b. *And they be either Fredial, as that which doth ariſe and grow by reaſon and vertue of the grounds, viz. Fruits, and increaſe of Beaſts, Fiſhes,* Fowls c, *&c. Or they be perſonal, as that which ariſeth by reaſon and vertue of lawful and honeſt commodity, ſo recovered and procured by art, ſcience, or manual Occupation of ſome Perſon* d. *It is alſo to be noted, that Tythes, ſome of them comprehended under theſe titles, Prædial and perſonal, be called by the name of mixt Tythes, of which ſort be ſuch as do riſe and grow partly by the grounde, and partly by the care, keeping, labour, and induſtry of ſome Perſon* e; *as of Cattel ſubject to the Fox, Woolf, and ſuch devouring Beaſts, ſuppoſed to be partly of the grounds where they be bred and fed* g, *even as a tree is ſuppoſed*

a Numb. 10.

b Card conſil 26. pro evidentia. c. tua c. fin. eod. c c. prevenir. præal. eo. c. non eſt. 22. c.

d c. ad apoſtolice. præal. e ca. commiſſum præal.. f apoſtolice. c paſtoralis eod. g l. cum quidam ff. de fun. inſtruct.

ſuppoſed to be alſo partly of that place where the roots do grow, by the which it is nouriſhed h: *ſo they be maintained by the grounds, but defended by the ſhepherds. Look more of mixt tithes ein the twelfth queſtion. Some of them by the name of greater Tithes, In Latine* Majores ſive groſſæ decimæ (*as we tearm them*) *Great Tythes: ſuch be of Corn and Pulſe* i. *Some of them be termed* Minores *or* Minutæ decimæ, (*in our common ſpeech*) *Small Tithes: ſuch be Seeds, Herbs, Eggs,* k *&c. mentioned in the ninth and fourteenth queſtions,* 1.

h l ſi plures in fin. ff. a. b. furt cæſ.

i c. ex multiplici de dec. & Glo: & DD. in c cum ex tua. & c. ex multiplici, præal. cod.

Of Preſcription.

PRescription is not ſo much differing from Cuſtom, as before is ſpecified of Tranſaction and Compoſition: but the one oftentimes is taken for the other a. Howbeit herein they differ, *Conſuetudo proprie dicitur quando ejus acquiritur in communi & publico. i.* It is properly ſaid to be cuſtom where a right to many is procured in common and publick; *Præſcriptio vero quando privato, i.* Preſcription when privately to one b.

a Dom. ca. 2. col. ult de preb. in 6. barb. conſil. 35. ſapienter. col. 6. in 2. vol. b Pan. in ca. cum eccleſia. col. 8. nu. 45. de cauſ. poſ.

Of Priviledge.

PRIVILEDGE or Exemption is derived from Authority Supream, by the which, *ex juſta cauſa, i.* upon cauſe and good conſideration, ſometimes the perſons themſelves, as the order called *Ciſtercienſes*, and other Religious perſons, were priviledged and exempted from Tithes c; ſometimes the places, as grounds be-

c c. a nobis de decim.

longing to Religious perſons *d*. For example, Monaſteries, Priories, Nunries, Colledges, &c. or other Eccleſiaſtical Houſes, &c. or any Manors, Meſſuages, Parſonages Appropriate, &c. or other Hereditaments which belonged unto the ſaid Monaſteries, Priories, &c. which were diſcharged of and for the payment of Tythes, being in the hands of Abbots, Priors or other Eccleſiaſtical Governors. Concerning theſe poſſeſſions in Religious perſons, there hath been five ſeveral times obſerved *e*: but leaving thoſe times I refer the Readers only to the Statute, *viz*. Theſe Monaſteries, &c. And every perſon and perſons, their Heirs and Aſſignes, having, &c. ſhall be according to their Eſtates and Titles diſcharged of payment of Tythes, in as ample manner as any of the ſaid Abbots, &c. at the dayes of their diſſolution, 31 H. 8. 13.

d c. ex parte eod.

e Rebuff. q. 14. nu. 37, 38, 39, 40, 42.

Summaries of the Statutes of Tything.

EVery of the Kings Subjects ſhall truly and juſtly without fraud or guile divide, ſet out, yield and pay, all manner of their prædial tithes, in their proper kind, as they riſe and happen in ſuch manner and form as hath been of right yielded and paid within forty years before the making of this Act (being *Novemb.* 4. *Anno* 1548.) or of Right or Cuſtom ought to have been paid. And no perſon ſhall take or carry away any ſuch or like tithes, &c. before he hath juſtly ſet forth for the tithe thereof the tenth part of the ſame, or otherwiſe agreed for the ſame Tithes with the Parſon, &c. under the pain of forfeiture of treble value of the Tithes ſo taken and carried away, 2 *Ed.* 6. 13.

At

At all times whenſoever the ſaid prædial Tithes ſhall be due at the tything time of the ſame, it ſhall be lawful to every party to whom any of them ought to be paid, or his Deputy or Servant to ſee their ſaid Tithe to be truly ſet forth, and ſevered from the nine parts, and the ſame quietly to take and carry away, 2 *Ed.6.* 13.

If any perſon carry away his Corn or Hay, or his other prædial tithes, before Tithe thereof be ſet forth, or willingly withdraw his Tithes of the ſame, or of ſuch other things whereof Prædial Tithes ought to be paid, or do ſtop or let the Parſon, Vicar, &c. or other their Deputies to view, take, and carry away their tithes, by reaſon whereof their ſaid tithe or tenth is loſt or hurt: then upon due proof thereof, &c. the party ſo carrying away, &c. ſhall pay the double value of the tenth, &c. beſides the coſts, charges and expences of the ſuit in the ſame, &c. to be recovered before the Eccleſiaſtical Judge, according to the Kings Eccleſiaſtical Laws, 2 *Ed.6.* 13. Double value of the tenth, beſides coſts.

Every perſon which ſhall have any Beaſts or other cattel tithable, going or feeding in any waſt or common ground, whereof the Pariſh is not certainly known, ſhall pay his tithes for the increaſe of the ſaid cattel, to the Parſon, Vicar, &c. of the Pariſh, Hamlet, Town, or other place where the owner of the ſaid Cattel, dwelleth, 2 *Ed.6.* 13. Waſt ground not certainly known of what Pariſh.

All ſuch barren Heath and Waſte Ground, &c. which before this time hath been Barren and paid no Tithes by reaſon of ſuch barrenneſs, and Shall be improved and converted into Arable ground or Meddow, ſhall after the end of ſeven years next after ſuch improvement, pay Tithe for the Corn and Hay, growing upon the ſame, But if ſuch barren, &c. hath Waſt ground improved that never paid tythe.

&c. hath before, &c. been charged with the payment of any Tithes, and the ſame be after improved, and converted into Arable ground or Medow, then the owner thereof ſhall, during ſeven years next following from and after the ſame improvement, pay ſuch kind of Tythe as was paid for the ſame before the ſame improvement, 2. *Ed.* 6. 31.

Waſt ground improved that paid tithe before.

Great wood of the age of twenty years or of greater age, ſold to Merchants to their own profit, or in aid of the King in his Wars, is not Tithable nor comprehended under this word *Sylva Cædua*, 4. *Ed.* 3. 3.

Sylva Cædua.

Every perſon exerciſing Merchandiſe, Bargaining and Selling &c. or other Art or Faculty, being ſuch kind of perſons and in ſuch places as heretofore within theſe forty years, have accuſtomably uſed to pay ſuch perſonal Tithes, or of right ought to pay (other than ſuch as be common day-labourers) ſhall yearly, &c. pay for his perſonal Tithes, the tenth part of his clear gains, his charges and expences, &c: deducted. But in all ſuch places where handicrafts men have uſed to pay their Tithes, &c. the ſame cuſtome of payment of Tithes ſhall be obſerved and continued, 2. *Ed.* 6. 13.

Perſonal tithes.

Every perſon which ought to pay Offerings ſhall (Yearly) truly pay them to the Parſon, Vicar, &c. at ſuch four offering dayes, &c. as have been accuſtomed for the payment of the ſame; and in default thereof to pay for the ſaid offerings at *Eaſter* then next following, 2 *Ed.* 6. 13.

Offerings.

No tithes of marriage-goods ſhall be required of any perſon within *Wales*, or the marches thereof. Neither ſhall any perſon be compelled to pay tithe for the lands or hereditaments, which by the Laws and Statutes of this

Wales.

this Realm, or by any Priviledge, or Preſcription, are not chargeable with the payment thereof: or that be diſcharged by compoſition real, 2. *Ed.* 6. 13.

If any perſon after ſentence definitive given againſt him, obſtinately refuſe to pay his Tithes, or ſhall otherwiſe contemn and diſobey the proceſs and decrees of the *Eccleſiaſtical* Courts, &c. then upon information given, &c. the ſame party ſhall be committed to ward, &c. 27. *H.* 8. 20. Look the ſtatute in all. Obſtinacy. Contempt.

If any of the parties do appeal, &c. then the Judge forthwith ſhall adjudge to the other party the reaſonable coſts of his ſuit therein before expended, and take ſurety of the other party, &c. To what effect, ſee the ſtatute in all, 32. *H.* 8. 7. Appeals.

If any party, &c. do ſue for any prohibition, &c. under the coppy of the Libel ſhall be written the ſuggeſtion wherefore the party ſo demandeth the ſaid prohibition: and in caſe the ſaid ſuggeſtion by two honeſt & ſufficient witneſſes at the leaſt, be not proved true in the Court where the ſaid prohibition ſhall be ſo granted, within ſix moneths next following, &c. Then the party that is hindred of his ſuit in the Eccleſiaſtical Court by ſuch prohibition, &c. ſhall have a conſultation granted, &c. and ſhall alſo recover double coſts and dammages, 2. *Ed.* 6. 13. And the Judges before whom the cauſe was firſt brought in queſtion ſhall proceed notwithſtanding the Kings prohibition, 24. *Ed.* 1. Prohibition. Conſultation.

Theſe be Summarily (Chriſtian Reader) the ſpiritual and ſtatute Laws of the Land for Tithing: *this is the work, take it in good part: the title but begun, may better be ſatisfied hereafter.*

FINIS.